

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-275-2020

Date of decision: March 13, 2020

Sahida		Petitioner
	Versus	
State of Haryana and others		Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Jamshed Ahmed, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 5.11.2019 passed by the Additional Sessions Judge, Mewat, vide which the application under Section 319 Cr.P.C. filed by the petitioner/prosecution for summoning respondents No.2 to 18 as additional accused in FIR No.114 dated 22.5.2017 under Sections 148, 323, 307, 506 read with Section 149 IPC, registered at Police Station Pinguwan, was dismissed.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Sahida, 23 persons, including respondents No.2 to 18, and 06 accused, namely Sattar, Isra, Mehboob, Mommen, Akbar and Jaan Mohd, who are facing the trail, were nominated as an accused. The contents of the FIR reads as under :-

“Sir, I Saheeda son of Jummey Khan age 50 years is permanent resident of Akbarpur. On 21.5.2017 at about

9.00 A.M., some altercation was taken place between the children of us and children of attackers. They have been stopped but they kept grudge about the incident. Same day at 5.00 O'clock, the above-said accused armed with Lathies, Dandas, Farsa and country made pistols have entered into the house of Ameen son of Raju in connivance with each other. I along with, Hazara and Ameen were sitting in the house of Ameen. On coming the attackers started beating to Ameen and Hazra with Lathies and Dandas and I saved myself from them. After giving beatings to Ameen and Azra, the accused came from there attacked on the shop of Hukmu Parchoon near Miyan Wali Masjid, Abid and Jummey were sitting there. The attackers had demolished the shop of Fakru and also demolished his material. They given servere beatings to Abid and Jummey Khan with lathi, Dandas and Pharsa. Fakru had saved himself by running from there. Abid, Hazara, Ameen and Jummey Khan are admitted in the hospital and they will stated about their injuries that who given injuries to them. Fajru son of Kapura and Ali Mohammad son of Jenu reached on the spot, who saved Jummey Khan etc. from the accused. The accused Vakeel son of Mahboob and Sakeel son of Mehboob and Mubarik son of Ishra and Momin son of Umar Mahammad were armed with illegal country made pistol. They were showing the country made pistols in the air and were saying that today we will shoot you. When Jummey Khan was saved, then accused were saying that today you escape, but when we would get a chance, we shall kill you. Till date, we had been going to the hospital for the treatment of injured persons. Therefore, you are requested that after registering the

case, legal action be taken against the accused persons.

Thanking you. LTI of Saheeda”

While conducting the investigation, the police submitted the report under Section 173 Cr.P.C. against the aforesaid 06 persons, while not presented the challan against respondents No.2 to 18 as they were stated to be found innocent. Thereafter the charges were framed and the prosecution in its evidence recorded the statement of complainant Sahida, who appeared as PW1 and he has duly supported the version given in the FIR. Counsel for the petitioner has further stated that one of the injured witness-Aabid. was examined as PW7 and he, apart from naming these 06 witnesses, who are facing the trial, has also named the other accused persons who were present at the spot. Similar is the statement of PW10 Aamin, who also given a version as given by PW6 Aabid. Counsel for the petitioner has further stated that in the statement recorded by these two witnesses under Section 161 Cr.P.C. specific allegation and injuries are attributed to respondents No.2 to 18.

Counsel for the petitioner has further submitted that the allegations against the accused persons are supported by the medical evidence, i.e. the MLR of the victims. He has further submitted that the trial Court, while passing the impugned order, has not looked into the allegations against respondents No.2 to 18.

Counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court passed in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623**, to submit that more than *prima*

facie evidence has come on record to summon respondents No.2 to 7 as additional accused.

The trial Court, while dismissing the application, has recorded the following observations :-

“4. I have heard learned counsel for the accused already facing trial and learned AAP for the State. Prosecution has examined total seven witnesses out of which PW7 is the injured witness.

5. Learned Public Prosecutor submitted that evidence and documents available on file will go to show that the proposed additional accused is involved in the commission of offence, there are specific allegations in the evidence of PW7 and specific role played by the said accused in furtherance of their common intention in the incident reported by way of registration of present FIR.

6. Learned Public Prosecutor for State, has vehemently contended that there is sufficient material on record to show that exercising the power under Section 319 Cr.P.C., as *prima facie* case against these persons has been made out.

7. He has relied upon the decision reported in Michael Machado and another Vs. Central Bureau of Investigation and another, (2000) 3 Supreme Court Cases, 262, the Hon'ble Supreme Court has held that power vested under Section 319 Cr.P.C. is discretionary in nature and when such trial Court deals with an issue as to whether a person is to be added as additional accused or not, the said discretion should be exercised judicially and very sparingly. It is further observed that

the Court must keep in mind the entire evidence as on the date of the consideration of the issue and also the material and evidence pressed in the service for invoking Section 319 of Code of Criminal Procedure.

8. Further, in the decision reported in Ram Pal Singh & Ors Vs. State of U.P. & Anr. AIR 2009 S.C. 1723, the Hon'ble Supreme Court has held that for invoking the power under Section 319 of Code of Criminal Procedure, it has to be satisfied from evidence before the Court that a person against whom no charge had been framed, but, whose complicity appears to be clear should be tried together with the other accused.

9. Learned counsel for accused already facing trial today submitted that the names of the proposed additional accused was shown as accused in the FIR. The investigating Officer after conducting investigation by the participation of senior police officers found that there was no possibility of this accused to have participated in the reported incident and complainant wants to falsely implicate him in this case. Investigation of the police has already come out with the result that the proposed accused is not involved in the commission of offence. It was argued that the present Court cannot rely on the evidence of PW7 alone without application of mind to mechanically allow the present application filed by Public Prosecutor to implicate the additional proposed accused, which is not sustainable in law.

10. Learned counsel for the accused already facing trial has placed reliance upon 2007(58) ACC 254, Mohd. Shafi Vs. Mohd. Rafiq and another, in which it has been

held that :-

“before the Court exercise, its jurisdiction in terms of Section 319 Cr.P.C., it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted.”

11. Further, counsel for the accused has placed reliance upon 2009(66) ACC 273, Brindaban Das and others Vs. State of West Bengal, in which it has been held that :-

“The exercise and powers under Section 319 Cr.P.C. should be exercised with great care and perspicacity.”

12. Hon'ble Apex Court in 2009(65) ACC 971, Ram Singh and others Vs. Ram Niwas and another, has laid down that :-

“Mere existence of *prima facie* case not sufficient to exercise jurisdiction under Section 319 Cr.P.C. and the Court must arrive at satisfaction that evidence adduced on behalf of prosecution, if unrebutted would lead to conviction of the person sought to be added as accused.”

13. Learned counsel for the accused has vehemently argued that the power conferred under Section 319 Cr.P.C. should be used very sparingly and the Court must be satisfied that there was strong suspicion. An extraordinary case has to be made out and sufficient and cogent reasons are required to be assigned by the Court as has been laid down in 2009(66) ACC 32, Sarabjit Singh and another Vs. State of Punjab and another.

14. It is well settled that during trial on the basis of evidence, if the Court is satisfied that any other person

other than the person arrayed as accused is in the case are involved in the commission of offence, then the Court can invoke the powers under Section 319 Cr.P.C. and implicate them as a party in the proceedings.

15. Appreciating the evidence of PW7, he has named 21 persons from the assailants side who had inflicted him and others, the injuries. His corresponding statement earlier recorded by the police is Ex.D1 accepted by him. However, in Ex.D1 he has named only five persons to have been the assailants members, who had attributed injuries on the complainant side with their specified weapons.

16. Closely appreciating the word to word evidence of PW7 the examined independent/injured witness of the prosecution, there appears to be limited persons named in his first statement Ex.D1. How this number of persons swelled up to a total of 21 persons in his statement before the Court as PW7 is highly unexplained. It can not be forgotten that in fight incidents there is a general tendency to robe in large number of persons from the same family or village, along with the main set of assailants of any fight incident.

17. On this appreciation of facts and material evidence, then the allegations of threatenings levelled by the complainant against the proposed accused are very limited and not specific in it's contents and on the basis of same, I do not find sufficient material on record to summon him under Sections 148, 323, 307 and 506 read with Section 149 IPC.

19. Hence, findings no merit in the application, the same is hereby dismissed.”

Learned State counsel, however, has argued that in view of the allegations made by PW7, the injured witness, the prosecution had moved an application under Section 319 Cr.P.C., which has been dismissed by the trial Court.

I have heard learned counsel for the parties and perused the paper-book.

A perusal of the FIR, registered at the instance of PW6 Sahida, do not give specific attribution to all the accused persons, i.e. respondents No.2 to 18, whereas the statement of PW7 and PW10 is reiteration of the version given by them under Section 161 Cr.P.C.

The trial Court has recorded a finding that PW7 in the cross-examination was confronted with his earlier statement recorded with the police as Ex.D1, which he has admitted to be correct and in this statement, he has named only 05 persons as assailants who are already facing the trial and all the injuries are attributed to these 05 persons. Therefore, I find no ground to interfere in the findings recorded by the trial Court that subsequently, PW7 has named as many as 21 persons without explaining their role.

Though it is well settled principle of law that the powers of the Court under Section 319 Cr.P.C are void and if the Court is satisfied from the evidence that a person against whom no charge has been framed but his complicity appears to be clear enough, he or she can be tried together with the other accused yet considering the fact that in the FIR,

no specific role is attributed to respondents No.2 to 18 and PW7, at the first instance, has given the name of 05 persons, who are already facing the trial, I find no ground to interfere in the findings recorded by the trial Court.

Accordingly, the present petition stands dismissed.

March 13, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No